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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re INETCAM, INC.

Serial No. 76078126

Heidi L. Eisenhut for INETCAM, INC.

Leigh Caroline Case, Trademark Examining Attorney, Law
Office 105 (Thomas G. Howell, Managing Attorney).

Before Hanak, Hohein and Hairston, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

INETCAM, INC. (applicant) seeks to register IVISTA in
typed drawing form for "computer software and hardware for
use in delivering live streaming media over a computer
network server for a global information network, or through
other video transmission vehicles." The application was
filed on June 19, 2000 with a claimed first use date of
June 5, 2000.

Citing Section 2(d) of the Trademark Act, the
Examining Attorney has refused registration on the basis
that applicant's mark, as applied to applicant's goods, is
likely to cause confusion with the mark VISTA, previously

registered in typed drawing form for "personal computer software program recorded on magnetic media, personal computer hardwired programming circuit board, and personal computer operator's hand control mouse, all for computerized video display enlargement systems for the visually impaired." Registration No. 1,503,617.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

Considering first the marks, we find that they are essentially identical. Our reasoning is as follows. Both applicant's mark and the registered mark are depicted in typed drawing form. This means that the "application [for the mark IVISTA] is not limited to the mark depicted in any special form," and hence we are mandated "to visualize what

other forms the mark might appear in." Phillips Petroleum Co. v. C.J. Webb Inc., 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971). In particular, we must give special consideration to the manner or manners in which applicant has actually depicted its mark. Phillips Petroleum, 170 USPQ at 36; INB National Bank v. Metrohost Inc., 22 USPQ 1585, 1588 (TTAB 1992).

In applicant's specimen of use, the VISTA portion of applicant's mark (IVISTA) is depicted in large, capital blue letters. The letter "i" in applicant's mark is displayed in red in lower case. Moreover, the letter "i" is approximately one half of the size of the letters in the VISTA portion of applicant's mark. The result is that the word VISTA is clearly the most prominent part of applicant's mark. Indeed, a consumer viewing applicant's mark as applicant has chosen to depict it could easily overlook the small letter "i" and see simply the far more prominent word VISTA, which is, of course, identical to the registered mark VISTA.

Moreover, the Examining Attorney has made of record from the Acronym Finder a listing for the letter I showing that it means, among other things, "Internet." In addition, the Examining Attorney has made of record

numerous news stories where the letter I (depicted both in upper and lower case) is used to indicate Internet.

In response, applicant merely notes, correctly, that the Acronym Finder lists other meanings for the letter I such as "iodine" and "incorporated." However, when used in connection with applicant's goods which are computer software and hardware for delivering media over a global information network, it is clear that most consumers would view the letter I as indicating Internet, and not as indicating iodine or incorporated. In this regard, it is well settled that in determining the meaning of a word or letter, the word or letter is not viewed in the abstract, but rather is viewed in relationship to the goods on which it is used. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

In short, we have compared the marks "in their entirety." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 750 (Fed. Cir. 1985). However, in so doing, we have given limited weight to the letter "i" in applicant's mark because not only has applicant depicted this letter in a decidedly subordinate fashion, but in addition this letter is, as applied to applicant's goods, clearly descriptive of them. National Data, 224 USPQ at 751 ("That a particular feature is descriptive ... with respect to the

involved goods or services is one commonly accepted rationale for giving less weight to a portion of the mark."). Thus, the first Dupont "factor weighs heavily against applicant" because applicant's mark is, as applicant has chosen to depict it, essentially identical to the registered mark. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Turning to a consideration of applicant's goods and the goods of the cited registration, we note that because the marks are essentially identical, their contemporaneous use can lead to the assumption that there is a common source "even when [the] goods or services are not competitive or intrinsically related." In re Shell Oil Co., 922 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993). However, in this case we find that applicant's goods and registrant's goods are, at a minimum, extremely similar. Stripped of excess verbiage, applicant's goods are computer software and hardware which deliver live media over a global information network or other video transmission vehicles. Registrant's goods include computer software and hardware for computerized video display enlargement systems for the visually impaired. In short, both applicant's and registrant's computer software and hardware deliver computer video images. Applicant's computer software and

hardware is not restricted as to users, and thus could include visually impaired individuals, the identical users of registrant's computer software and hardware. In sum, we find that as described in the application and registration, applicant's goods and registrant's goods are extremely similar, if not legally identical. See Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987)(It is well settled that in Board proceedings, "the question of likelihood of confusion must be determined based on an analysis of the mark as applied to the goods and/or services recited in applicant's application vis-à-vis the goods and/or services recited in [the cited] registration, rather than what the evidence shows the goods and/or services to be."). Thus, applicant's arguments at pages 5-7 of its brief as to the purported differences in its actual goods versus registrant's actual goods are not only unsupported by any evidence, but in addition are legally deficient.

One final comment is in order. Applicant has made of record what purports to be a mere list of registration numbers and marks consisting of or containing the word VISTA. Applicant then argues that "the mark VISTA has become relatively weak." (Applicant's brief page 7).

There are two problems with applicant's "evidence." First, this evidence does not indicate which goods or services these purported VISTA marks are registered for. Obviously, as applied to computer products the word VISTA is arbitrary, and applicant does not argue otherwise. The fact that the word VISTA may be used alone or with other words in conjunction with different goods or services such as, for example, seafood and transportation services, does not mean that the word VISTA is in any way whatsoever weak as applied to computer software and hardware. Second, and of greater importance, third-party registrations of marks containing the word VISTA are not evidence that said marks are in use, and they are certainly not evidence that said marks have been used so extensively as to have any bearing whatsoever on the issue of likelihood of confusion. Smith Bros. Mfg. Co. v. Stone Mfg. Co., 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973).

Decision: The refusal to register is affirmed.